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# SUPREME JUDICIAL COURT.

SUFFOLK, ss.

IN EQUITY.

THE ATTORNEY GENERAL *vs.* THE RECTOR AND CHURCHWARDENS OF  
TRINITY CHURCH & OTHERS.

## STATEMENT OF FACTS.

THIS is an information purporting to be filed by the Attorney General, at the relation of the Convention of the Protestant Episcopal Church in the Diocese of Massachusetts; and of Frank Croston and Christian Peterson, for themselves and in behalf of the other poor of 'Christ Church; against the Rector and Churchwardens of Trinity Church, the vestrymen, and the corporation of that church, certain persons claiming to be minister, wardens, and vestrymen of King's Chapel, the religious society claiming to be proprietors of pews in King's Chapel, and the Rector and Wardens of Christ Church.

The information having been amended by agreement, by inserting the name of Thomas Bulfinch, claiming to have been elected a vestry man of King's Chapel since it was filed, in the stead of Stevenson and Ward, named therein; and having been taken for confessed against the Rector and Wardens of Christ Church; the other parties agree that the cause shall be set down for hearing upon the information and the answers of Trinity Church and of the Proprietors of King's Chapel, with such modifications of the legal effect thereof as may be created by the following admissions and documents; both parties reserving all just right of exception to the competency or relevancy of any averment, either in the information or answers, and of any fact or testimony contained in this agreed statement, or in any of the writings attached thereto.

The informant and relators do not hereby bind themselves to the effect of any of the allegations in the answers in regard to any ques-

tion of knowledge or expectation of the testator, or of his intention, except so far as may result from the will itself, together with such distinct averments of facts and circumstances as are properly admissible in aid of the construction of the will, or from other legal proofs in the cause. Nor shall either party be bound by any averment of the other as to legal inferences, or as to the effect of any decision of this Court. Nor shall any averments in the answers in regard to the expense of living or other expenses in the city of Boston at the time of the death of the testator, or as to the decrease in the value of money since that time, be regarded as admitted in the case, except so far as is admitted or shown by the other facts and averments in the case, and by general history, of which the Court will take judicial notice. Any question as to the identity of the corporation now known as King's Chapel with the corporation of that name existing at the date of Price's will, or as to its capacity to take under that will, as arising from change of creed, or form of worship or organization, is submitted to the Court upon the facts herein stated.

But if, upon the hearing of the cause, any question of fact shall arise in regard to which the Court shall deem it important to be more specifically informed; and especially should it be deemed material to the final disposition of the cause to determine whether King's Chapel ever accepted the testator's devise in the manner required by the will; and whether the alterations in the Liturgy in 1785 were adopted by sufficient vote of the proprietors of pews in the Chapel; any such question of fact may by the Court be referred to one of the counselors of this Court, to be agreed upon by the parties or named by the Court, whose report shall be of the same force as the verdict of a jury.

The King's Chapel was the only church of the Church of England in Boston until 1722, when Christ Church was erected and dedicated. William Price contributed to the expense of building Christ Church in 1722, and from 1726 to 1743 was a warden or vestryman of that church. During his life, there were no other churches of the Church of England in Boston, except the King's Chapel, Trinity Church, and Christ Church, in all of which he owned pews.

It is stated in the records of King's Chapel that upon the decease of their rector, the Rev. Mr. Samuel Miles, Mr. Henry Harris being then assistant minister, the "congregation of King's Chapel passed the following votes, and in pursuance thereof the Rev. Roger Price was selected and became rector of the church."

"Att a meeting of the Congregation of the Kings Chappel in Boston Wednesday the 13 of March 1727-8 by adjournment.



“The Question was put whether the Rev<sup>d</sup>. Mr. Henry Harris has a right to join with the Congregation in church affaires as the minister of Kings Chappell for the time being. Then it was proposed whether the question as above written should be put to vote or not, it passed in the negative.”

“If it be your minds that his Excellency Generall Nicholson and Mr. Thomas Sanford merch<sup>t</sup>. in London be the persons impowered, or in the absence of one of them the other be impowered, to present a clergyman for institution, quallified as by the foregoing vote, [namely, well affected to the King and Protestant Succession, a friend to the Church of England, of ability and morals, &c.,] in the name & behalf of this congregation within six months from the death of the late Rev<sup>d</sup>. Mr. Miles to our right reverend Diocecan the Lord Bishop of London to succeed the Reverend Mr. Miles in this church, manifest, &c. It passed in the affirmative.”

“The question was put, If it be your minds that the committee or the majority of them forthwith remit 20£ sterling out of the church stock to Mr. Thomas Sanford to pay the passage of the clergyman who shall be presented by Gen<sup>l</sup>. Nicholson or Mr. Sanford or either of them for institution to succeed the late Rev<sup>d</sup>. Mr. Samuel Miles, manifest it &c? It passed in the affirmative.

“If it be your minds that the committee now chosen or the majority of them be impowered to remit such sum or sums of money as they or the majority of them shall find absolutely necessary to defend our right of presentation to this church against any person or persons whomsoever shall dispute the same, manifest it &c. It passed in the affirmative.”

In Dr. Greenwood’s History of King’s Chapel is the following statement, which for the purposes of this case is to be taken as true: “Another difficulty was raised respecting the right of presentation to the rectorship of the Chapel. The congregation were afraid that the Bishop of London would claim it, whereas they insisted on its belonging to themselves, and voted to defend it at any expense against any who might dispute it. Their agent in this business in London was Mr. Thomas Sandford. He had several interviews with the Bishop, in some of which he was accompanied by Mr. Charles Apthorp, who was then in England, and an amicable settlement was the result. Even on his first visit to the Bishop, the latter told him that he did not pretend to the right of presentation, but thought that it was in the congregation who supported the minister; and it was agreed that his lordship should *recommend* some fit person as rector, who should be the person whom Mr. Sandford, as the agent of the

congregation, should *present* to his lordship for his license. Accordingly, Mr. Roger Price was recommended, presented, and licensed. The Bishop says of him, in a letter written in April, 1729: 'He has been long known to me, and is one whom I am willing to entrust with the power of commissary for inspecting the lives and manners of the clergy, if he succeed in that place; and I think a better service cannot be done the congregation than the inducing both parties to unite in him.' " Mr. Price was the Bishop's Commissary in New England from about this time until 1753. For the general nature of that office, reference may be made to Dr. Greenwood's History.

In 1746, Mr. Price resigned his office of rector, and the Rev. Dr. Henry Caner, then a clergyman in Episcopal orders in Connecticut, was elected and instituted without any direct authority from the Bishop, and conducted to the Chapel by the Rev. Mr. Commissary Price. Until 1776 the assistant ministers of the Chapel received an annual grant from the King, and were appointed by the Bishop of London, and, in accordance with an agreement between the ministers and the proprietors, had a voice in the government of the church.

When William Price made his will, the edifice now known as King's Chapel was owned by a body politic existing by prescription and known as the Proprietors of King's Chapel, the pews therein being owned and possessed by individual proprietors thereof, each of whom was a member of such corporation as such proprietor; and, at the time last mentioned, this organization was in communion with the Church of England as by law then established. Upon the evacuation of Boston on the 17th of March, 1776, by the British troops, the rector, Dr. Caner, went with them, taking with him the church registers of births and marriages, the vestments and plate, and part of the records of the vestry. The assistant minister left the church in November of that year, the congregation was dispersed, and the doors of King's Chapel closed until 1782, except that in 1777 the use of the chapel was granted by those proprietors of the pews who remained, to the congregation of the Old South Church, who occupied it for about five years. In September, 1782, the wardens of King's Chapel who had been elected that year invited the Rev. James Freeman to officiate as reader; and in April, 1783, he was chosen pastor by said proprietors, and they consented to such alterations of the service merely as the political state of the country required. In 1785, by vote of the proprietors, a few alterations in the Liturgy were made, which consisted principally in the omission of the doctrine of the Trinity; and the Chapel has never been occupied since by any

church or society in connection or communion with the Church of England or the Protestant Episcopal Church in the United States. Dr. Caner never returned to this country ; was not deprived of his office by any episcopal authority, or in any other manner than as aforesaid. So far as known, he was never settled elsewhere ; and, after he left as aforesaid, lived in England, where he died.

The present edifice of Trinity Church was built in 1828-9, and has never been specially fitted up, repaired, or maintained, with a view to the accommodation of the Price sermons. The churchwardens and vestrymen of Trinity Church have always been proprietors of pews therein, and, since the statute of 1830, chapter 83, members of the corporation of Trinity Church. The amount expended by the rector and wardens of said church, or by the corporation of Trinity Church, for missions, has been the average sum of \$1150 in each year for the last twenty years, out of collections taken up and otherwise obtained for the purpose. The income received by Trinity Church from the Greene foundation and other sources, for the support of the rector and assistant minister, has amounted to an average sum in each year, for the last twenty years, of \$2800 ; and, from pew rents, to the average sum of \$6438 during the same period ; which sums have been paid towards the support of the rector and assistant minister.

The rents and income of the Price estate, while received by King's Chapel, from 1814 to 1828, amounted to the sum of \$14,662.16 ; the expenditures charged to said fund amounted to the sum of \$4,537.53 ; and the residue was applied to the general expenses of King's Chapel. From 1829 to the present time, the rents of that estate, received annually by Trinity Church, have amounted to the sum of \$3420 ; of which the expenditures charged to said fund have amounted in each year to \$306 ; and of the balance, one half, viz. \$1557, has been annually paid to the Proprietors of King's Chapel, and the other half applied to the general expenses of Trinity Church ; and the appropriation by the Rectors and Wardens of Trinity Church has been made with the knowledge and approval of the vestry of that church. From 1814 to the present time, the sum of \$96.80 has been annually applied in payment of the twenty pounds sterling mentioned in the will : to wit, forty shillings to the church holding the estate ; sixteen pounds for the preaching of sermons ; and two pounds to the poor of Trinity Church, King's Chapel, and Christ Church ; and no further sum has been paid or appropriated for the preaching of sermons or for the poor, specially from this fund.

The proceedings in 1860 and 1861 in the Convention of the Protestant Episcopal Church in the Diocese of Massachusetts, relating to



this devise, set forth in the information, were known to all the respondents; and the application of a committee of the Convention on the 23d of March, 1861, to the Rector and Churchwardens of Trinity Church, and their answer to that application, were known to the vestrymen of Trinity Church.

In the case of the Rector and Churchwardens of Trinity Church against Stodder and others, in which final judgment was rendered at November term 1828 of this Court, the only agreement on file (except an assent to a formal amendment of the writ) is as hereto annexed, and marked "C;" and the signers thereof were authorized counsel and attorneys of the parties whom they therein assumed to represent. Copies of the opinion of the full Court after the first trial, and of so much of the record of that case as follows the statement of the pleadings, are also annexed, and are marked respectively "A" and "D."

The annexed certified copies of extracts from the Province valuation of 1771, signed by the assessors of Boston, marked "E," and from the earliest existing tax books of the town of Boston, marked "F," may, if by law admissible and competent, be used as evidence for the informant and relators. Neither the valuation book of ward 9 for 1780, nor any Province or town books of valuation or assessment for any previous year, nor for the years 1781-3, have been found. The valuations of the estate devised by Price, as shown by the tax books of the town and city of Boston, from 1784 to 1862, are set forth in the schedule hereto annexed, and marked "G;" and, so far as competent evidence, may be referred to by either party.

The following maps of Boston, purporting to be published by William Price in 1722, 1733, 1743, and 1769, may, if admissible and competent, be referred to by the informant:

1. "The Town of Boston in New England by Capt. John Bonner 1722 Aetatis suæ 60." "Engraven and Printed by Fra: Dewing Boston N.E. 1722. Sold by Capt. John Bonner and Willm. Price against ye Town House where may be had all Sorts of Prints, Mapps &c." Upon this map is an "Explanation," containing these statistics: "Streets 42, Lanes 36, Alleys 22. Houses near 3000, 1000 Brick, rest Timber. Near 12,000 People."

2. "A New Plan of ye Great Town of Boston in New England in America with the many Additionall Buildings and New Streets to the Year 1733." Dedicated to Governour Belcher by William Price, and "Printed for and Sold by Wm. Price at ye Kings Head and Looking Glass in Cornhill." Upon it is this statement: "This Town hath been Settled 103 Years, its Number of Houses about 4000 and

Inhabitants about 18,000. In it are 2 Churches of England, 8 Congregational Meeting Houses," &c.

3. "A New Plan of ye Great Town of Boston in New England in America with the many Additionall Buildings and New Streets to the Year 1743." Similar to the second, but stating that "This Town hath been Settled 113 Years, its Number of Houses about 4000 and Inhabitants about 20,000. In it are 3 Churches of England, 10 Congregational Meeting Houses," &c. "In the year 1735 this town was divided into 12 Wards by a vote of the Inhabitants," as shown upon the plan, of which No. 9 includes Price's house and shop.

4. "A New Plan of ye Great Town of Boston in New England in America with the many Additionall Buildings and New Streets to the Year 1769." "This Town hath been Settled 139 Years, its Number of Houses about 4000, and Inhabitants about 20,000. In it are 3 Churches of England, 10 Congregational Meeting Houses," &c. Wards as before.

The deposition of William H. Gardiner, Esquire, taken by the respondents, is made part of this statement of facts, subject to all right of exception by the other party to its admissibility or legal effect.

Upon the whole case, the Court may give such relief as the informant and relators may be entitled to claim, if any. Otherwise the information is to be dismissed.

ISAAC F. REDFIELD,	}	<i>for Trinity Church</i>
S. BARTLETT,		<i>and the Wardens</i>
E. D. SOHIER,		<i>and Vestry Defts.</i>

B. R. CURTIS,	}	<i>for King's Chapel</i>
S. BARTLETT,		<i>and the Wardens</i>
CHAS. P. CURTIS, JR.,		<i>and Vestry Defts.</i>

HORACE GRAY, JR.,  
*for the Informant and Relators.*

Reserved for a hearing by the whole Court.

T. METCALF, J. S. J. C.

Feb. 18th, 1864.

## DEPOSITION OF WILLIAM H. GARDINER.

*First Interrogatory.* Were you or not of counsel for the plaintiffs in the suit *The Minister and Churchwardens of Trinity Church vs. Jonathan Stodder et al.*, pending in the Supreme Judicial Court for the County of Suffolk, and finally disposed of therein in the year 1828? If so, give the names of counsel associated with you, and also of the counsel for the defendants.

*Answer.* I brought the suit as attorney for the demandants, and was retained as junior counsel expressly. The gentlemen whom I was associated with as counsel were Charles Jackson (then lately retired from the Supreme Bench, and acting as chamber counsel only), Daniel Webster, Benjamin Gorham, and Samuel Hubbard (afterwards on the Supreme Bench), who were relied on to act with me as counsel in Court. These were the regularly retained counsel. In addition, Mr. William D. Sohier and Mr. Samuel D. Parker, who, being pewholders in the church, declined taking retainers, offered their professional services gratuitously, and rendered very efficient service. They were consulted as freely as the retained counsel in every important step in the cause. The gentlemen whom I met in Court as counsel for the Chapel were my old master, William Prescott (afterwards Judge Prescott), Daniel Davis (then the Solicitor General), William Sullivan, and Charles P. Curtis; and, beside these gentlemen, I sometimes met Mr. William Minot, acting apparently as counsel, but he was at the time, I believe, a warden of the church, and may have acted in that capacity. I omitted to state, with reference to Trinity Church, that Mr. Samuel D. Parker was the chairman of a committee appointed by the proprietors of pews to attend to the prosecution of the claim.

*Second Interrogatory.* If said cause was argued to the full Court, and any opinion, order, or disposition made thereof, please state about what time this occurred, and whether or not it was declared by the Court that the justices thereof were divided in opinion, or was the fact known to you, and how?

*Answer.* The suit was begun in September, 1824; carried through the October term of the Boston Court of Common Pleas, on the old



fiction of a judgment on demurrer ; and was entered at the November term following of the Supreme Court for Suffolk, and brought to trial before the jury before Chief Justice Parker on the 18th and 19th of January, 1825. The case was fully opened to the jury, and much evidence introduced on either side, when the Chief Justice suggested whether there would really be any thing for the jury to settle ; and thereupon, after a brief conference between the counsel at the bar, it was arranged that a formal verdict should be taken for the tenants, subject to the opinion of the Court, the whole Court, upon the questions of law that had been raised, and upon a report to be made of the evidence introduced, and an agreement that either party might introduce any further evidence, either assented to by the other party, or determined by the Court to be admissible and material. I was particularly struck, in the discussion at the bar and with the Chief Justice, with the sagacity and adroitness of my associate counsel, Mr. Hubbard. Proof had been made by the defendants, the tenants, of a formal acceptance of the donation under Price's will, by the Chapel Society, at two different periods ; one in 1809, after the death of the last tenant for life ; and one as long ago as 1789, which was a surprise to the counsel of Trinity Church, but was nevertheless after those changes in the constitution of the Chapel Church, which incapacitated them, according to our construction, from accepting the donation. And, besides, we contended that the acceptance of 1809 was too late, being after the expiration of the particular estate during which — no, at which point — as we held, the remainder must vest in one or other of the two churches. Judge Prescott, to avoid the objections to both these acceptances, started another point, that it must be presumed, from all the circumstances in the case, that there had been a formal acceptance by Dr. Caner and his wardens, who left the country in 1776 ; which acceptance would have been while the church continued in all particulars as it was at the date of Mr. Price's will. Mr. Hubbard was afraid of having any thing go to the jury. He wished to have every thing referred to the Court ; and he so contrived to meet Mr. Prescott's new point, and so to put it to the Chief Justice, as to lead him to look at the point suggested as a legal presumption, and not a presumption of fact. With the zeal of a young lawyer, I was rather desirous of going to the jury ; but Mr. Hubbard overruled me : and I afterwards found he was right ; being told by one of the jury, whom I knew, that they had quite made up their minds to find a verdict against the demandants. It was the ingenuity of Mr. Hubbard, which turned Mr. Prescott's point, in the mind of the Chief Justice, into a question of law, whereas it was

in reality a question of fact. This disposition of the cause led us to perceive that it was of the utmost importance that the ancient records of the King's Chapel, supposed to have been carried away by the old rector when he left the country as a refugee, should be found, if possible. A special agent was sent to Halifax, whither Dr. Caner had first proceeded, to make search in all likely places there. This being unsuccessful, a special agent was employed in London, who made search first in the office of the Bishop of London, who had ecclesiastical charge of all the churches in the colonies, and also at the several places in England where Dr. Caner had lived, and at the place where he died. All this delayed the cause until March term, 1827; when it was argued to the Court, on the 7th, 8th, and 9th of March. We heard nothing from the Court until June, 1828; when they made a disposition of the case, which, with what they said in relation to it, will best appear by the paper which I now introduce. It is an official report of the case by Octavius Pickering (the then reporter), and appended, marked "A." The peculiar language, by which it is said that "a majority of the Court are not of opinion that they were in a condition to make one," is to be translated by the fact, perfectly well known to the bar at the time — though I cannot state how with certainty — that the Court were equally divided upon the main question which had been submitted to them; namely, the identity of the Chapel Society, at the time of the acceptances of 1789 and 1809, with the Society existing in 1770, and the competency of the former to accept the donation. It was even known, or supposed to be known, at the bar, how the particular Judges had divided. I remember its being a subject of conversation at the bar, as proof of the eminent judicial integrity of that Court, that they did not allow their judgment upon questions of law to be in the slightest degree affected by their religious biases: for it was said that Judge Morton, the only Episcopalian on the bench, had sided with the Chief Justice against the demandants; and that Judge Wilde, a usual worshipper at the King's Chapel, had sided with Judge Putnam in favor of the demandants' claim, the latter also being understood to be a Unitarian.

*Third Interrogatory.* Whether or not, after such disposition of said case, the Justices of said Court, or any and which of them, and whether in the presence of the others or not, advised or suggested to the counsel of either or both parties any thing, and what, upon the propriety of a compromise? State, as nearly as you can recollect, all that occurred, if any thing.

*Answer.* That question I cannot answer so distinctly and posi-



tively as the others, for the reason that I have nothing in writing to refresh my recollection of this ancient transaction; but it lies strongly in my mind, that on some occasion, either on the morning of the delivery of the opinion above given, or at some time after, such a suggestion, intimation by inquiry or otherwise, was made by the Chief Justice, seconded by Judge Putnam, to some of the counsel on each side; and that this occurred in the presence of the other Judges, who said nothing. I should explain that at that time it was much the habit of a few members of the bar to meet the Judges for a few minutes just before the opening of the Court, in the Law Library, or the Judges' lobby adjoining it; when sometimes a short conversation was had, or at least a remark made, relative to some case pending. My belief is that on one of these occasions the suggestion to which I have referred was made, to the effect that the parties should consider whether the scandal of an obstinate litigation between two Christian religious societies might not be avoided by some compromise of the matter in dispute. I cannot say whether this was after or before the above mentioned announcement of an order for a new trial. My impression is that it was immediately before that announcement; and that the conversation was with Mr. Curtis and myself, with some of the other counsel on both sides. I should explain my first statement, as to the want of any writing to refresh my memory on this subject, by saying that last winter I had the misfortune to lose by casualty all my old law papers, or nearly all; amongst them, no doubt, my original briefs and minutes of the proceedings in this suit. Some persons who thought the paper more valuable than the contents got access to them where they were stored in closets in an attic, and carried them off by bags and baskets full at a time, to sell to the paper-maker brokers; which process went on till nearly all were gone before it was discovered.

*Fourth Interrogatory.* Were arrangements afterwards made by the counsel of both parties for a compromise? and whether or not did all the respective counsel of the parties advise such compromise? and was or not any doubt suggested by any of the counsel as to the power of both said parties to make such compromise? Was or not such compromise consummated by an indenture bearing date 21st November, 1828?

*Answer.* Arrangements were afterwards made by the counsel of both parties for a compromise. It was advised by all of them on both sides. I never heard the slightest doubt suggested, by either of the counsel or any other person, at that time, as to the power of the two churches to settle this matter by compromise. The compromise

agreed upon in its germ appears by a paper which I now produce and annex, marked "B." This was the substance of a compromise agreed upon, which, after further conferences between the counsel and the parties, was finally expanded into a long indenture of four parts; which, I believe, is the same as is annexed to the answer of Trinity Church, and appears to have been dated November 21, 1828. I would further state, in reference to the advice of counsel, that before concluding this indenture of compromise the committee of the proprietors of Trinity Church, through Mr. Samuel D. Parker, their chairman, desirous not to take upon themselves undue responsibility in the matter, thought proper to take, and did obtain, a written paper or papers, signed by Mr. Jackson, Mr. Webster, Mr. Hubbard, Mr. Gorham, Mr. Sohler, and myself, unanimously advising and recommending the compromise proposed.

*Fifth Interrogatory.* Please state whether said compromise was or was not made after the discovery of the lost records of King's Chapel.

*Answer.* It was after that discovery; and the production of those records, found to be silent as to any acceptance of the Price Donation by the ante-Revolutionary rector and wardens of King's Chapel, was the final cause of the compromise; the counsel of King's Chapel having, until then, unshaken confidence in the soundness of their title.

*First Cross-Interrogatory.* Were you, at the time of the interviews and transactions of which you have testified, the attorney or counsel of the rector and churchwardens of Trinity Church only, or of the vestrymen and the corporation of that church? or of what, if any other person, officer, or corporation, connected with or interested in that church, or in the property derived from William Price?

*Answer.* I considered myself the counsel of the rector and wardens, as the legal corporation to whom the devise was made for the benefit of the church or parish; and also as counsel for the proprietors of pews, who constituted the parish or society, and by whom I was retained; and of the vestrymen, so far as they acted for either of those two bodies. Whether I had any distinct authority or not from the vestrymen, as such, I do not now distinctly remember. I have no doubt they knew of all that was done by me in the premises, and I have no recollection that they dissented from any thing.

*Second Cross-Interrogatory.* Of what persons or corporations connected with that church or King's Chapel, or interested in the property derived from said Price, were the other counsel whom you have named attorneys or counsel?

*Answer.* I presume they were all retained, who were retained at all, by the committee of the proprietors of pews, of which Mr. Samuel D. Parker was chairman on the one side. I have no means of knowing whom the gentlemen who acted for the Chapel represented, further than appears by the records and proceedings of the Court.

*Third Cross-Interrogatory.* Were any persons, corporations, or public officers, parties to the conversations or transactions aforesaid, except as representing the parties of record to that suit?

*Answer.* I don't know. The defendants in the suit were Stodder and Frobisher, occupants of the building. The rector and wardens of King's Chapel, and proprietors of that church, one or both, as the records will show, I presume, came in aid of the title of their tenants. I remember no other person, present at any formal conferences on the subject, than the representatives of the parties to the record, and of the several corporate bodies I have named.

*Fourth Cross-Interrogatory.* Did you draw up the report upon which the case of *Trinity Church vs. Stodder* was argued to the full Court? Please produce a copy of that report.

*Answer.* I did, no doubt, mainly draw up that report. It was printed for the Court; but I have no copy.

*Fifth Cross-Interrogatory.* Does that report truly, fully, and accurately state the proceedings and evidence in the case?

*Answer.* The report must speak for itself. I suppose it does. It was doubtless intended to.

*Sixth Cross-Interrogatory.* What became of the deposition of Dr. Freeman, referred to in that report? and of the other original papers in that case?

*Answer.* I know not.

*Seventh Cross-Interrogatory.* Was any agreement of parties or counsel filed in Court in that case (except an assent to a formal amendment of the writ), other than the agreement, a copy of which is annexed, and marked "C"?

*Answer.* I do not know. I think it likely several were filed in the course of the proceedings. Whether the paper now shown me is a true copy of any paper filed in the case, is more than I know. Having read it, I answer that it reads very probable; and I believe it to be a true copy. I suppose so.

*Eighth Cross-Interrogatory.* Did you ever file in the case any agreement or memorandum of terms of compromise, or statement that a compromise had been agreed on?

*Answer.* Not that I remember. I don't know whether I ever did or not.



*Ninth Cross-Interrogatory.* Where and how was the lost record discovered?

*Answer.* I was told that it was found by Mr. James T. Austin, in a chest of papers of Mr. James Ivers, formerly a warden of the King's Chapel; and I heard at the time where the chest was found — either in a garret of Mr. Austin's house, or at some sugar-bakery, where Mr. Ivers carried on business — but I am not sure of this. I remember distinctly when I was first informed of it, by Solicitor Davis, in the Supreme Court; and I remember that, like a young lawyer, I at first considered it absolutely decisive of the case; but after sundry conferences with my elders, and instructions from them as to how presuming a jury might be, I became a wiser man, and coincided with them in the opinion that half a loaf was better than no bread, and that the risk of a total loss had better not be taken.

*Tenth Cross-Interrogatory.* Were the contents of that record known to you or other counsel of Trinity Church, when the terms of compromise were agreed upon between the two churches?

*Answer.* Certainly. It was known to us that the record contained nothing on the subject of Mr. Price's will; at any rate, not concerning the acceptance under it.

*Eleventh Cross-Interrogatory.* Was it ever suggested by any of the Judges or counsel that a compromise would cut off any rights of persons or public officers claiming or asserting an interest or title in any charity created by the will of Price?

*Answer.* No. No such question could have suggested itself, I think, under the construction put upon Mr. Price's will by all the counsel, so far as I know.

*Twelfth Cross-Interrogatory.* Had any process then been commenced or threatened or suggested, to assert, establish, or enforce such a charity?

*Answer.* Not that I know of.

W. H. GARDINER.

A.

OPINION OF COURT IN TRINITY CHURCH *vs.* STODDER.

Sup. Jud. Court. Mar. T. 1828. In Suffolk.

Trinity Church *vs.* Stodder & al.

PER CURIAM. We are agreed that by the will of Price the estate in controversy is either a vested remainder with a conditional limitation, or a contingent remainder, depending, in either case, on an acceptance in pursuance of the will. An acceptance by the tenants has been sufficiently proved, but a majority of the Court are not of opinion that they were in a condition to make one; but judgment cannot be rendered in favor of the demandants, for there may have been an acceptance in the time of Dr. Caner. Whether there was an acceptance by him and his wardens has been referred to us as a question of law; but the point is whether from lapse of time, loss of records, &c., a certain act may be presumed to have been done, and this is a question of fact. It must be determined by a jury therefore whether there was an acceptance by Dr. Caner; and for that purpose a new trial is granted. It will not be necessary to go into evidence of other points in the case.

A copy, OCTAVIUS PICKERING, *Reporter, &c.*

Salem, Oct. 6, 1828.

Dear Sir, I send you the substance of what fell from the Ch. Justice in the case of Trinity Church *vs.* Stodder & al., for which you will pay me \$1.50 when we happen to meet.

Yours truly, O. PICKERING.

Charles P. Curtis, Esq., Boston.

## B.

## MEMORANDUM OF COMPROMISE.

Rector and Wardens of Trinity Church *vs.* Jonathan Stodder & al.

The Committee, Rector and Wardens, with the concurrence of the Vestry and Proprietors of Trinity Church, propose the following terms of compromise of the above named suit:—

A general and conclusive verdict shall be taken, and judgment entered for the demandants, who shall hold the estate devised by Mr. Price, and execute the trust as nearly as may be according to their own discretion, and without the participation or interference on the part of the Minister, Wardens, Vestry or Proprietors of the Chapel: the income of the estate shall be applied, 1st, to defray the expenses of the trust; 2d, for necessary repairs, of which a joint committee of gentlemen chosen equally by each society shall judge; 3d, one half the residue shall be paid over annually by the demandants to the proper persons authorized to receive it by the Chapel Society; excepting that one half of so much of the back rents as have been received by the said Chapel Society since the demandants' entry shall be deducted from the annual payments aforesaid, by instalments of five hundred dollars annually; the said deduction to begin at the first annual payment after the decease of the Rev. Dr. Freeman.

Acceded to.

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## C.

AGREEMENT ON FILE IN TRINITY CHURCH *vs.* STODDER.

Supreme Judicial Court. Suffolk. Nov. Term, 1824. N. E. 76.

The Ministers & Churchwardens of Trinity Church *vs.* Jonathan Stodder & al.

## Agreement of Parties.

It is agreed that James Freeman, D.D., who calls himself the Rector of King's Chapel at Boston aforesaid, and Ebenezer Oliver and Joseph May, Esquires, who call themselves the Churchwardens of said

King's Chapel, and who in their said supposed capacities claim to be in law and in fact the same corporation which existed and was known by the name of the Rector and Churchwardens of King's Chapel at said Boston A.D. 1770, and who also claim to be lessors of said Stodder and Frobisher, and to hold the demanded premises in fee by virtue of their said offices, may come in aid of the said Stodder and Frobisher, and be received as joint defendants with them, to answer the aforesaid plea or count of the said demandants, with liberty to prove any title by way of defence, which the said Freeman and others may have to the demanded premises.

But it is understood, that nothing herein shall be construed to be an admission on the part of the demandants of the present legal existence of any corporation or body known by the name of the Rector (or Minister) and Churchwardens of King's Chapel, having capacity as such to take and hold the demanded premises, or to sue and defend respecting the same; nor an admission that said corporation (if it be proved that any such exist) is an Episcopal Church; or that it is the same corporation or the same church with that known by the same name A.D. 1770; nor that said Freeman is the legal rector or minister, and that said Oliver and May are the legal wardens thereof; or that they are the legal successors of the Rector and Churchwardens of the King's Chapel who were A.D. 1770; or that they have any right, by virtue of any such supposed offices, to claim and hold the demanded premises under the devise of William Price, formerly of said Boston, deceased, as against the title of the demandants under the same devise, and their entry unto said lands under the same. And it is also agreed, that the demandants may amend their writ and declaration; that the final judgment of the Court in this action shall be binding and conclusive upon the present Rector or Minister and Churchwardens of said King's Chapel, and their successors, and upon the church or society, and proprietors of pews of said King's Chapel, as well as upon the said Stodder and Frobisher, in the same manner and to the same extent, as it is binding and conclusive on said demandants and their successors, and the church jointly and proprietors of pews by them represented.

W. H. GARDINER, *Attorney for Demandants.*

DAN'L DAVIS, }  
WM. SULLIVAN, } *for Defendants.*  
WM. PRESCOTT, }



## D.

RECORD IN TRINITY CHURCH *vs.* STODDER.

[After stating the pleadings, the above agreement "C," and the amendment of the plea accordingly.] And issue being thus joined, the case after a full hearing was committed to a jury duly empanelled and sworn according to law, to try the same upon the evidence, and the said jury returned their verdict therein upon oath against the demandants, that is to say, the said jury found that the said Stodder and Frobisher did not disseize the demandants in manner and form as the demandants in their said declaration had alleged; which verdict was returned subject to the opinion of the whole Court upon certain matters of law arising out of the evidence in the case, and according to the decision whereof the said verdict was to be set aside and judgment entered for the demandants, or to be affirmed and judgment entered thereon for the tenants, or a new trial to be ordered, as law and justice in the opinion of the Court should require; and thence said appeal was continued from term to term until the term begun and holden at said Boston on the first Tuesday of March A.D. 1827, when and where the parties were fully heard by the Court upon the matters of law reserved as aforesaid; and thence said appeal was further continued from term to term for advisement and for the opinion of the Court upon the matters of law aforesaid, until the term begun and holden at said Boston on the first Tuesday of March A.D. 1828, when the aforesaid verdict was set aside, and a new trial ordered; and afterwards at this term of the same Court, begun and holden at said Boston on the second Tuesday of November A.D. 1828, it was suggested upon the record by the attorney of said demandants that pending the said suit and since the filing of the aforesaid plea the said Ebenezer Oliver, who had appeared as one of the churchwardens of the said King's Chapel, was deceased, and the said Joseph May, who had appeared as the other churchwarden of said King's Chapel, had resigned his said office, and that Francis J. Oliver and William Minot, both of said Boston, Esquires, had been elected to the said offices, and then were churchwardens of said King's Chapel; and thereupon the said Francis J. Oliver and William Minot came respectively, and were received in the respective places of said Ebenezer Oliver and Joseph May as



the churchwardens of said King's Chapel, and jointly with the said James Freeman as rector of the same appeared in aid of the said Stodder and Frobisher, and together with the said Stodder and Frobisher and Freeman undertook to defend against the title of the said demandants to the said demanded premises upon the same issue as aforesaid; and immediately thereafter the same issue as aforesaid was committed to another jury duly empanelled and sworn according to law to try the same upon the evidence before them, and the said jury returned their verdict therein upon oath, as follows, to wit, "The jury find that the minister, wardens, vestrymen, and proprietors of pews for the time being of King's Chapel would not accept, and that the minister and churchwardens of the same have not accepted, the donation of William Price in and by his last will and testament and the codicil thereto, in manner and form as are thereto prescribed; and further find that the said Stodder and Frobisher did disseize the demandants in manner and form as the demandants have thereof alleged." And all and singular the premises being seen and understood, it is considered by the Court that the said demandants recover judgment for the seizin and possession of the said demanded premises against the said Stodder and Frobisher, and the said James Freeman as rector or minister and Francis J. Oliver and William Minot as churchwardens of the said King's Chapel in their corporate capacity, and for their costs of suit; and thereupon the said demandants, freely remitting to the said tenants the whole amount of the costs of suit recovered as aforesaid, agreed to sue out their writ of execution upon the judgment aforesaid for the possession only of the said demanded premises without costs.

Habere Facias poss. issued Nov. 22d, 1828.

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## E.

### EXTRACTS FROM THE PROVINCE VALUATION OF 1771.

A List of the Polls and of the Estates, Real and Personal, of the several Proprietors and Inhabitants of the Town of Boston, in the County of Suffolk, taken pursuant to an Act of the General Court of the Province of the Massachusetts Bay, entitled An Act for enquir-

ing into the Rateable Estates of this Province, passed in the Eleventh Year of his present Majesty's Reign, by the Subscribers, Assessors in said Town duly elected and sworn, viz.

WARD 9.						
Men's Names who are reateable	Dwelling-houses and Shops under the same Roof, or adjoining to them	The Annual Worth of the whole Real Estate with- out any Deduction for more than ordinary An- nual Repairs		Servants for Life, between 14 and 45 Years of Age	An Account of each Per- son's whole Stock in Trade, Goods, Wares, and Mer- chandize, paid for or not paid for	Money that any Person has at Interest, more than he or she pay Interest for.
Widow Price	1	£	s.	1	£	s.
		40	0		40	0
						50 0

Assessors Office, Boston, October 1st, 1771.

Pursuant to an Act entitled an Act for enquiring into the rateable Estates of this Province, We the Subscribers, Assessors for the Town of Boston duly Elected & Sworn, have taken a List of the Polls & of the Estates real & personal of the Inhabitants of said Town as Contained in the Seventy Rolls herewith exhibited, all which has been perform'd according to our best Skill & Judgment.

JOHN KNEELAND,	} <i>Assessors for the Town of Boston.</i>
BENJA. CHURCH,	
JONATHAN BROWN,	
BELCHER NOYES,	
DANL. PECKER,	
MOSES DESHON,	
GILES HARRIS,	

Commonwealth of Massachusetts, ss. Boston, February 17, 1864.  
I hereby certify that the above are true extracts from the Valuation Returns of 1771 of the Province of Massachusetts Bay, preserved among the Archives in my custody as Secretary of the Commonwealth.

OLIVER WARNER,  
*Secretary.*

## F.

## EXTRACTS FROM BOOKS OF ASSESSORS OF BOSTON FOR 1780.

1. *Extract from "Taking Book, Ward No. 9, 1780."*

NAMES.	Polls.	Rents.	
Widow Price . . .		200	

2. *Extract from "Tax Book, Ward No. 9, 1780."*

STATE TAX.				TOWN & COUNTY TAX.		
NAMES.	Polls.	Rents.	Estate.	Polls.	Rents.	Estate.
Widow Price		12.15.0.			6.6.0.	

3. *Extract from "Valuation Book, Ward No. 7, 1780."*

NAMES.	Yearly Rents.	6 years Income.	Personal Estate.	Profits 6 pr cent.
Joseph Callender . . .	200	72		836
William Davis . . .	200	72		100
Benjamin Hammett . . .	200	72		2100
Simeon Mayo . . .	200	72		800
Lendell Pitts . . .	200	72		2500
Samuel Pitts . . .	200	72		742
Habijah Savage . . .	200	72		718
Charles Sigourney . . .	200	72		1200

4. *Extract from "Taking Book, Ward No. 7, 1780."*

NAMES.	Polls.	Rents.	Observations.
Joseph Callender . . . . .	2	200	Ironmonger.
William Davis . . . . .	1	200	Merchant.
Benjamin Hammett . . . . .	1	200	Merchant.
Simeon Mayo . . . . .	2	200	Merchant.
Lendell Pitts . . . . .	2	200	Merchant.
Samuel Pitts . . . . .	2	200	Merchant.
Habijah Savage . . . . .	1	200	Merchant.
Charles Sigourney . . . . .	2	200	Merchant.

5. *Extracts from "Tax Book, Ward No. 7, 1780."*

STATE TAX.				TOWN & COUNTY TAX.		
NAMES.	Polls.	Rents.	Estate.	Polls.	Rents.	Estate.
Joseph Callender .	20.0.0	12.15.0	148. 0.10	9.18.0	6.6.0	73. 3.0
William Davis .	10.0.0	12.15.0	17.14. 2	4.19.0	6.6.0	8.15.0
Benjamin Hammett	10.0.0	12.15.0	371.17. 6	4.19.0	6.6.0	183.15.0
Simeon Mayo . .	20.0.0	12.15.0	141.13. 4	9.18.0	6.6.0	70. 0.0
Lendell Pitts . .	20.0.0	12.15.0	442.14. 2	9.18.0	6.6.0	218.15.0
Samuel Pitts . .	20.0.0	12.15.0	131. 7.11	9.18.0	6.6.0	64.18.6
Habijah Savage .	10.0.0	12.15.0	127. 2.11	4.19.0	6.6.0	62.16.6
Charles Sigourney	20.0.0	12.15.0	212.10. 0	9.18.0	6.6.0	105. 0.0

To Francis Shaw, Esq<sup>re</sup> One of the Collectors of the Town of Boston. You are directed to collect the Sums in this List, & in Number One & Nine, amounting to the Sum of Sixty two Thousand, four hundred, forty eight pounds, Seven shillings & Seven pence. And pay as follows, viz: To Henry Gardner Esq<sup>re</sup> Treasurer & Receiver General of the State of the Massachusetts Bay, or his Successor in said Office, Forty one thousand, four hundred, eighty eight pounds, twelve shillings & three pence, To David Jeffries, Esq<sup>re</sup> Treasurer & Receiver for the County of Suffolk, or his Successor in said Office, Nine hundred & one pounds, eight shillings, To David Jeffries, Esq<sup>re</sup> Treasurer for the Town of Boston, or his successor in said Office, Twenty thousand, forty seven pounds Seventeen shillings & ten pence, Pursuant to this our Warrant 28th day of March 1780.

State . .	£41,488.12. 3
County . .	901. 8. 0
Town . .	20,047.17.10
	<hr/>
	62,437.18. 1
Overplus .	10. 9. 6
	<hr/>
	62,448. 7. 7

JON <sup>A</sup> BROWN	} <i>Assessors for the Town of Boston.</i>
GILES HARRIS	
SAMUEL DYER	
JN <sup>O</sup> PULLING	
MOSES MAY	

City of Boston, Assessors' Office, February 17, 1864. I hereby certify that the above are true copies from the earliest books of the assessors of the town of Boston, now in the custody and possession of the assessors of said city; that in adding together, at the end of

"Valuation Book, Ward No. 7, 1780," the sums at the foot of the several pages therein contained, the footings of the second columns are added up as "Rents," and those of the fourth as "Faculty," and no notice is taken of the first and third columns.

HENRY SARGENT,  
*Secretary to the Board of Assessors.*

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G.

VALUATION IN TAX BOOKS OF BOSTON.

YEAR.	Parties to whom taxed.	Valuation.
1784-6.	Misses Creese, maiden ladies . . . . .	£300
1787.	„ „ single ladies . . . . .	£300
1788.	„ „ Considerable Property . . . . .	£300
1789.	„ „ . . . . .	£375
1790.	„ „ Virgins &c. . . . .	£400
1791.	„ „ . . . . .	£400
1792.	„ „ Old Maids . . . . .	£400
1793.	„ „ Maiden Ladies . . . . .	£500
1794.	„ „ Virgins . . . . .	£500
1795.	„ „ . . . . .	\$1,700
1796.	„ „ . . . . .	\$1,000
1797.	Misses Creese, \$1,000 ; Wm. Pelham, \$1,350 . . . . .	\$2,350
1798-9.	W. Pelham, \$1,350 ; Miss Creese, \$1,500 . . . . .	\$2,850
1800-1.	Miss Creese, \$1,500 ; W. Pelham, \$2,000 . . . . .	\$3,500

[Up to this time, the valuation and tax books correspond with the taking books. The figures which follow are from the taking books ; the valuation in the other book being half as much, from this time until 1841, since which all the books again correspond.]

1802-5.	Miss Creese, 5,000 ; W. Pelham, 3,000 . . . . .	\$8,000
1806.	Wm. Pelham . . . . .	\$9,000
1807-10.	Same . . . . .	\$8,000
1811.	John McFarland & others . . . . .	\$10,000
1812.	John McFarland . . . . .	\$9,000
1813.	Same . . . . .	\$8,400
1814.	Same . . . . .	\$8,000
1815.	Baldwin & Jones . . . . .	\$9,600
1816.	Same . . . . .	\$11,000



1817.	Same	. . . . .	\$10,600
1818-9.	Same	. . . . .	\$11,800
1820.	L. C. Bowles & others	. . . . .	\$10,000
1821.	Stodder & Frobisher	. . . . .	\$10,000
1822.	Same	. . . . .	\$12,000
1823.	Same	. . . . .	\$14,000
1824.	Same	. . . . .	\$14,400
1825-7.	Proprietors of Stone Chapel	. . . . .	\$15,400
1828.	Same	. . . . .	\$16,000
1829-31.	Proprietors of Trinity Church	. . . . .	\$16,000
1832.	B. C. Frobisher	. . . . .	\$17,000
1833.	Saml. Baker &c.	. . . . .	\$17,000
1834.	Swett & Roberts	. . . . .	\$17,000
1835.	Jos. Brown, Owner Trinity Church	. . . . .	\$17,000
1836.	G. W. Sherry	. . . . .	\$17,000
1837-8.	Davis & Palmer	. . . . .	\$27,000
1839-44.	Same	. . . . .	\$28,000
1845-6.	Proprietors of Trinity Church	. . . . .	\$40,000
1847-8.	Same	. . . . .	\$45,000
1849-50.	J. B. Macomber	. . . . .	\$45,000
1851-3.	Same	. . . . .	\$30,000
1854-6.	Same	. . . . .	\$33,000
1857-60.	Same	. . . . .	\$36,000
1861-2.	Price Estate	. . . . .	\$36,000

Copy,

Attest :

*Clerk.*











Trials.

L65824

vol. 16.

DATE

ISSUED TO

L65824

vol. 16

